

Assembly Bill No. 1732

Passed the Assembly August 19, 2014

Chief Clerk of the Assembly

Passed the Senate August 18, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 11713, 11713.1, and 11713.16 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1732, Stone. Vehicles: manufacturers, distributors, and dealers.

Existing law generally requires a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Existing law prohibits these licensees from, among other things, failing to, within 48 hours, withdraw in writing an advertisement of a vehicle that has been sold or withdrawn from sale and advertising or representing a vehicle as a new vehicle if the vehicle is a used vehicle. Existing law makes it a crime to violate these provisions.

This bill would prohibit a licensee from advertising a vehicle's prior use or ownership history in an inaccurate manner. By expanding the scope of a crime, the bill would impose a state-mandated local program.

Existing law makes it a violation for the holder of a dealer's license to, among other things, use "rebate" or similar words in advertising the sale of a vehicle unless the rebate is expressed in a specified dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor. Existing law also makes it a violation to advertise as the total sales price of a vehicle an amount that includes a deduction from a rebate, except as specified.

This bill would additionally authorize the use of "rebate" if the rebate meets the requirements described above and is offered by a finance company affiliated with a vehicle manufacturer or distributor, a regulated utility, or a governmental entity. The bill would also prohibit a dealer from advertising a rebate reduction that conflicts with another advertised rebate deduction. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 11713 of the Vehicle Code is amended to read:

11713. A holder of a license issued under this article shall not do any of the following:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in a newspaper or other publication, or an advertising device, or by public outcry or proclamation, or in any other manner or means whatever, a statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, a statement as part of a plan or scheme with the intent not to sell a vehicle or service so advertised at the price stated therein, or as so advertised.

(b) (1) (A) Advertise or offer for sale or exchange in any manner, a vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of a vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

(c) Fail, within 48 hours, to withdraw in writing an advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

(e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Part 5 of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) Employ a person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) Deliver, following the sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section

24000). This subdivision does not apply to the sale of a leased vehicle to the lessee if the lessee is in possession of the vehicle immediately prior to the time of the sale and the vehicle is registered in this state.

(j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle. The terms “no downpayment,” “zero down delivers,” or similar terms shall not be advertised unless the vehicle will be sold to a qualified purchaser without a prior payment of any kind or trade-in.

(l) Participate in the sale of a vehicle required to be reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of the full sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) Permit the use of the dealer’s license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer’s license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.

(n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which a manufacturer’s or distributor’s warranty commenced.

(p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. Purchase deposits accepted by an autobroker when brokering a retail sale shall be governed by Sections 11736 and 11737.

(q) Consign for sale to another dealer a new vehicle.

(r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

(s) Use a picture in connection with an advertisement of the price of a specific vehicle or class of vehicles, unless the picture is of the year, make, and model being offered for sale. The picture shall not depict a vehicle with optional equipment or a design not actually offered at the advertised price.

(t) Advertise for sale a vehicle that was used by the selling licensee in its business as a demonstrator, executive vehicle, service vehicle, rental, loaner, or lease vehicle, unless the advertisement clearly and conspicuously discloses the previous use made by that licensee of the vehicle. An advertisement shall not describe any of those vehicles as “new.”

(u) Advertise the prior use or ownership history of a vehicle in an inaccurate manner.

SEC. 2. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is a violation of this code for the holder of a dealer’s license issued under this article to do any of the following:

(a) Advertise a specific vehicle for sale without identifying the vehicle by its model, model-year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California. An advertisement that offers for sale a class of new vehicles in a dealer’s inventory, consisting of five or more vehicles, that are all of the same make, model, and model-year is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing charges not

exceeding fifty dollars (\$50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document processing charge or charge to electronically register or transfer the vehicle.

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, a charge to electronically register or transfer the vehicle, and a dealer document processing charge.

(2) The obligations imposed by paragraph (1) are satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: “Plus government fees and taxes, any finance charges, any dealer document processing charge, any electronic filing charge, and any emission testing charge.”

(3) For purposes of paragraph (1), “advertisement” means an advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on a Web page of a dealer’s Internet Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (f) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document processing charge, electronic registration or transfer charge, or emission testing charge, as a governmental fee.

(e) Fail to sell a vehicle to a person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, mobilehome escrow fees, the amount of a city, county, or city and county imposed fee or tax for a mobilehome, a dealer document processing charge, an electronic registration or transfer charge, and a charge for emission testing not to exceed fifty dollars (\$50) plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale a new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to a transaction involving the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(I) A vehicle acquired in the ordinary course of business as a new vehicle by a dealer franchised to sell that vehicle, if all of the following apply:

(i) The manufacturer or distributor of the vehicle files a bankruptcy petition.

(ii) The franchise agreement of the dealer is terminated, canceled, or rejected by the manufacturer or distributor as part of the bankruptcy proceedings and the termination, cancellation, or rejection is not a result of the revocation by the department of the dealer's license or the dealer's conviction of a crime.

(iii) The vehicle is held in the inventory of the dealer on the date the bankruptcy petition is filed.

(iv) The vehicle is sold by the dealer within six months of the date the bankruptcy petition is filed.

(3) Subparagraph (I) of paragraph (2) does not entitle a dealer whose franchise agreement has been terminated, canceled, or rejected to continue to perform warranty service repairs or continue

to be eligible to offer or receive consumer or dealer incentives offered by the manufacturer or distributor.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. “Free” includes merchandise or services offered for sale at a price less than the seller’s cost of the merchandise or services.

(i) (1) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as “starting at,” “from,” “beginning as low as,” or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

(2) For purposes of this subdivision, in a newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price. However, in no case shall the phrase be printed in less than 8-point type size, and the phrase shall be disclosed immediately above, below, or beside the advertised price without intervening words, pictures, marks, or symbols.

(3) The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use “rebate” or similar words, including, but not limited to, “cash back,” in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor, a finance company affiliated with a vehicle manufacturer or distributor, a

regulated utility, or a governmental entity directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, “cash price” has the same meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(l) Advertise a guaranteed trade-in allowance.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use “invoice,” “dealer’s invoice,” “wholesale price,” or similar terms that refer to a dealer’s cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer’s or distributor’s invoice price to a dealer.

(B) A dealer’s cost.

(2) This subdivision does not apply to either of the following:

(A) A communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle’s invoice price or the dealer’s cost for that vehicle.

(B) A communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a “commercial purchaser” means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate a law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make an untrue or misleading statement indicating that a vehicle is equipped with all the factory-installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is “fully factory equipped.”

(q) Affix on a new vehicle a supplemental price sticker containing a price that represents the dealer’s asking price that

exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item that is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) Advertise an underselling claim, including, but not limited to, "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than another licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) (1) Advertise an incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

(2) For purposes of this subdivision, "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale a used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that

franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point boldface type on the face of a contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) Sell or lease a new motor vehicle after October 1, 2012, unless the dealer has a contractual agreement with the department to be a private industry partner pursuant to Section 1685. This subdivision does not apply to the sale or lease of a motorcycle or off-highway motor vehicle subject to identification under Section 38010 or a recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(z) As used in this section, “make” and “model” have the same meaning as is provided in Section 565.12 of Title 49 of the Code of Federal Regulations.

SEC. 3. Section 11713.16 of the Vehicle Code is amended to read:

11713.16. It is a violation of this code for the holder of any dealer’s license issued under this article to do any of the following:

(a) Advertise any used vehicle of the current or prior model-year without expressly disclosing the vehicle as “used,” “previously owned,” or a similar term that indicates that the vehicle is used, as defined in this code.

(b) Use the terms “on approved credit” or “on credit approval” in an advertisement for the sale of a vehicle unless those terms are clearly and conspicuously disclosed and unabbreviated.

(c) Advertise an amount described by terms such as “unpaid balance” or “balance can be financed” unless the total sale price is clearly and conspicuously disclosed and in close proximity to the advertised balance.

(d) Advertise credit terms that fail to comply with the disclosure requirements of Section 226.24 of Title 12 of the Code of Federal Regulations. Advertisements of terms that include escalated payments, balloon payments, or deferred downpayments shall clearly and conspicuously identify those payments as to amounts and time due.

(e) Advertise as the total sales price of a vehicle an amount that includes a deduction for a rebate. However, a dealer may advertise a separate amount that includes a deduction for a rebate provided that the advertisement clearly and conspicuously discloses, in close proximity to the amount advertised, the price of the vehicle before the rebate deduction and the amount of the rebate, each so identified. A dealer may not advertise a rebate deduction that conflicts with another advertised rebate deduction.

(f) Advertise claims such as “everyone financed,” “no credit rejected,” or similar claims unless the dealer is willing to extend credit to any person under any and all circumstances.

(g) Advertise the amount of any downpayment unless it represents the total payment required of a purchaser prior to delivery of the vehicle, including any payment for sales tax or license. Statements such as “\$_____ delivers,” “\$_____ puts you in a new car” are examples of advertised downpayments.

(h) Advertise the price of a new vehicle or class of new vehicles unless the vehicle or vehicles have all of the equipment listed as standard by the manufacturer or distributor or the dealer has replaced the standard equipment with equipment of higher value.

(i) Fail to clearly and conspicuously disclose in an advertisement for the sale of a vehicle any disclosure required by this code or any qualifying term used in conjunction with advertised credit terms. Unless otherwise provided by statute, the specific size of disclosures or qualifying terms is not prescribed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2014

Governor